IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Contempt Petition Nos. 102 and 103 of 2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

---

CORAM : A.P.Lavande, J.
DATED :14th August 2006

P.C.

Both these petitions are being disposed of by common order since common questions of fact and law are involved in both matters.

The petitioners, who are serving as Head Master and Head Mistress in Licit High School, Thanegaon have filed the present proceedings for contempt against respondents for noncompliance of order dated 21st March 2005 passed by Additional School Tribunal, (Nagpur) at Chandrapur in Appeal No. STC-18/05 and STC-19/05 preferred by the petitioners herein.

The petitioners filed above two appeals against order of termination dated

31st January 2005 issued by the Administrator appointed for the school. The School Tribunal by order dated 21st March 2005 granted ad interim stay in both matters and further granted reinstatement of the petitioners. Thereafter the petitioners were reinstated in December 2005. It is the case of the petitioners that the respondents are not complying with the orders passed by the School Tribunal by not releasing salary to the petitioners. Before filing contempt petitions the petitioners filed applications before the School Tribunal for initiating contempt against respondents in the appeals filed by them. By Order dated 11.11.2005 the School Tribunal held the petitioners were at liberty to file complaint before Criminal Court under section 13 of Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, (for short “MEPS Act”) for non compliance of the order passed by the Tribunal and further that the petitioners were at liberty to initiate execution proceedings before the

Competent Court to execute order dated 21.3.2005.

I have heard Mr. Khajanchi, learned counsel for the petitioners and Mr. Parihar, learned AGP for respondent no.1 and Mr. Parchure, learned counsel for respondent no.2.

Mr. Khajanchi, learned counsel appearing for the petitioners submitted that the respondents are bound to comply with order dated 21.3.2005 passed by the School Tribunal in the appeals filed by the petitioners and by not releasing salary of the petitioners, the respondents have disobeyed the order passed by the School Tribunal and therefore, a clear case of contempt has been made out against both respondents. According to learned counsel, once reinstatement was granted by the School Tribunal, it would necessarily follow that failure to release salary by the respondents would amount to noncompliance of order dated 21.3.2005 passed by the School Tribunal. In support of

his submissions, he relied upon the judgment of the Supreme Court in (2006) 5 Supreme Court Cases 399 (Midnapore Poples' Coop. Bank Ltd. and others Vs. Chunilal Nanda and others) and (1981) 3 Supreme Court Cases 225 (Mohan Lal Vs. Management of M/s. Bharat Electronics Ltd.).

Per contra, Mr. Parihar, learned AGP appearing for respondent no.1 submitted that the petitioners have not been able to establish that respondent no.1 has wilfully disobeyed the order passed by the School Tribunal.

Mr. Parchure, learned counsel appearing for respondent no.2 relying upon the provisions of The Maharashtra Educational Institutions (Management) Act, 1976 (hereinafter referred to as “the 1976 Act”) submitted that since the order of termination has been passed by the Administrator, the appeal has to be filed before the Director in terms of Section 3 (7) (f) of the 1976 Act. He, therefore, submitted

that the order passed by the School Tribunal of reinstatement is patently without jurisdiction and non-est and therefore, no contempt is made out against respondent no.2. In support of his submissions, Mr. Parchure relied upon the Division Bench of this Court reported in 1984 Mh.L.J. 520 (Vivekanand Atmaram Chitale and another Vs. Vidyavardhini Sabha and others). He further submitted that in the order there is no direction to respondent no.2 to release the salary and therefore, it cannot be said that there is wilful disobedience of the order passed by the School Tribunal. According to Mr. Parchure, in view of order dated 21.11.2005, the only remedies available to the petitioners are to file complaint under Section 13 of the Act and to file proceedings for execution of the order passed by the School Tribunal.

In reply, Mr. Khajanchi submitted that although the order of termination has been passed by the Administrator, an appeal to the School Tribunal is maintainable.

Reliance has been placed upon the judgment of the Division Bench of this Court reported in 2001 (1) Mh. L.J. 887 (Chandrakant Vs. State of Mah.). He further submitted that even if any interim order is passed which is ultimately set aside the contempt proceedings would like for disobedience of the interim order. He placed reliance upon the judgment reported in (2004) 7 Supreme Court Cases 261 (Prithawi Nath Ram Vs. State of Jharkhand & Others). Placing reliance upon the judgment of the learned Single of this Court reported in (2001 (1) Mh.L.J. 261 (Vilas Shankarrao Vs. S.A. Ghode), learned counsel submitted that contempt proceedings are maintainable for disobedience of the order passed by the School Tribunal.

I have considered submissions made by learned counsel appearing for the parties. I have perused the records and the judgments relied upon by the parties.

The main question which arises for consideration is whether the respondents

have wilfully disobeyed order dated 21.3.2005 passed by the School Tribunal in two appeals preferred by the petitioners granting ad interim stay of order of termination dated 31.1.2005 issued by the Administrator and further to reinstate the petitioners in their original position.

Mr. Khajanchi has not disputed that the petitioners have been reinstated by the Administrator pursuant to the order dated 21.3.2005 passed by the School Tribunal. The only grievance made by the petitioners that the respondents have not released salary of the petitioners and therefore, they have committed contempt. Insofar as respondent no.1 is concerned, learned counsel for petitioners has not been able to point out any order or any provision which mandates him to release the salary of the petitioners. Insofar as respondent no.2 is concerned, according to Mr. Khajanchi, the payment of salary to the petitioners is incidental to the order of reinstatement granted by the School Tribunal. In this

connection, the petitioners have placed reliance upon the judgment of Apex Court in the case of Midnapore Peoples Coop Bank Ltd (supra). In the said case, the Apex Court, inter alia, dealt with as to what orders would be passed in contempt proceedings and in paragraph 11 summarized the position emerging from the decisions in regard to appeals against orders passed in contempt proceedings. Mr. Khajanchi placed reliance on para 11 (III) of the said judgment which reads as thus :-

“11 (III) In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties”.

According to learned counsel, payment of salary is a matter incidental to the order of reinstatement and, therefore,

respondent no.2 has clearly committed contempt. I am unable to accept the submissions of Mr. Khajanchi. In para 11 (III) the Apex Court has held that in contempt proceedings, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. It is, therefore, clear that what the Apex Court has mentioned therein as to what orders could be passed by the Court in the event contempt of court is proved. Therefore, the submission of Mr. Khajanchi that release of salary is a matter incidental to the order of reinstatement and therefore, non release of salary amounts to contempt cannot be acceptable. I am, therefore, unable to hold that in terms of order dated 21.3.2005 passed by the School Tribunal, respondent no.2 was bound to release salary of the petitioners having regard to the fact that it is primary responsibility of the Administrator to pay salary to the employees of the school. No doubt, since

the School is aided, the school is entitled to receive salary grants from the Government but that by itself would not be sufficient to hold that respondent no.2 has wilfully disobeyed order dated 21.3.2005 passed by the School Tribunal. Moreover, the petitioners had also approached School Tribunal for initiating contempt proceedings which have been disposed by order dated 21.11.2005 permitting to the petitioners to file complaint before Criminal Court under section 13 MEPS Act for non compliance of the order passed by this Court and further to execute order passed by the School Tribunal. That being the position, the petitioners are at liberty to take appropriate proceedings in terms of the said order passed by the School Tribunal if they are so advised.

In the backdrop of above discussion, I am of the opinion that the petitioners have not been able to establish that there is wilful disobedience of order dated 21.3.2005 passed by the School

Tribunal warranting initiation of the contempt proceedings against respondents.

In view of the above, it is not necessary for me to deal with the other submissions made and authorities relied upon by learned counsel for the parties.

In the result, therefore, I do not find any ground to initiate contempt proceedings against respondents. Consequently, the petitions are dismissed. Having regard to the facts and circumstances of the case, the petitioners to pay costs of Rs. 1000/- each in favour of High Court Legal Services, Sub Committee, Nagpur. The costs shall be deposited within a period of four weeks

JUDGE

A.